

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-186753

DATE:

61548
SEP 24 1976

MATTER OF: John W. Murphy - Transportation of household
goods

97975

DIGEST: GAO has no authority to waive indebtedness of employee arising from excess cost of shipping household goods incident to permanent change of station since 5 U.S.C. § 5724(a)(2) (1970) limits the maximum weight which may be transported at Government expense to 11,000 pounds and there is no specific statutory authority for waiver of that limitation.

This is a consideration of the appeal made by Mr. John W. Murphy from a settlement letter of our Transportation and Claims Division (now Claims Division), dated April 9, 1976, certifying Mr. Murphy to be indebted to the United States Government for excess shipment of household goods incident to a transfer of duty station.

The record shows that pursuant to Travel Order No. TOCP 05-67, issued June 5, 1972, Mr. Murphy, a civilian employee of the United States Forces Support Activity, Munich, was transferred from Munich, Germany, to Athens, Greece, to fill the position of principal of the Department of Defense school located in Greece. This travel order provided that shipment of household goods, not in excess of 11,000 pounds net weight, was authorized. Prior to the move Mr. Murphy completed an inventory of his household goods on Department of Defense (DD) Form 1701. Based upon this inventory it was estimated, prior to weighing, that Mr. Murphy's household goods were within the 11,000-pound weight limitation. Subsequently, the net weight of the household goods shipment was determined to be 12,012 pounds, or 1,012 pounds in excess of the 11,000-pound weight limitation. Accordingly, Mr. Murphy has been billed by the Department of the Army for excess weight charges in the amount of \$370.96.

Mr. Murphy requests that the indebtedness resulting from the excess weight of his household goods be waived by our Office on humanitarian grounds.

B-186753

We note that there was originally some confusion regarding the exact amount of excess weight for which Mr. Murphy was liable. The submission shows that the household goods were shipped by freight forwarder in type II, door-door containers and that such containers are specially designed, reusable shipping boxes. Accordingly, the formula found at 2 JTR para. C7050-2b (change 73, December 1, 1971), the regulation in effect at the time of the transfer, provided the appropriate method for computing the net weight of the shipment since it provided in pertinent part:

" * * * For containerized shipments when special containers designed for repeated use, such as lift vans, CONEX transporters, and household goods shipping boxes, are used and the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, the net weight of the household goods shall be 85% of the gross weight less the weight of the container. * * *"

A weight certificate, dated July 7, 1972, showed the gross weight of the shipment as 18,447 pounds and the tare weight as 4,313 pounds leaving 14,132 pounds net weight for billing purposes. Using the formula of paragraph C7050-2b, allowing 15 percent of the net weight for billing purposes as padding or 2,120 pounds, the net weight was correctly determined to be 12,012 pounds, or 1,012 pounds in excess of the 11,000-pound limitation.

Mr. Murphy alleges that at the time he left Munich, Germany, a clerk in the transportation office told him, after the shipment had been weighed, that his household goods were within the authorized weight allowance. Moreover, he contends that had he been informed that his household goods exceeded the 11,000-pound limitation, he could have reduced the weight of the shipment to a level within the authorized limit and, thereby, avoided excess charges. This allegation is disputed by the transportation officer who specifically denies that Mr. Murphy was informed that the shipment was below the 11,000-pound weight limitation after weighing.

Section 5724(a)(2) of title 5, United States Code (1970), provides for payment by the Government of the expenses of transporting up to 11,000 pounds of household goods of transferred employees. Regulations issued under the authority of 5 U.S.C. § 5724(a) and in effect at the time of the transfer provided that the transferred employee would be liable for all costs in connection with shipment of household goods in excess of the weight limitation and that the signature of the employee on the application for shipment, DD Form 1299, would constitute an agreement to pay excess weight charges. 2 JTR para. C7052-2a (change 81, July 1, 1972), and B-180180, February 1, 1974. Mr. Murphy agreed to and did sign DD Form 1299 incident to this transfer.

Paragraph C7052-2a, Volume 2, JTR (change 81, July 1, 1972), the regulation in effect at the time of the transfer, provided that if excess weight was known prior to shipment, the transportation officer should have notified the employee. However, there is no evidence in the record to indicate knowledge on the part of the transportation officer. Even if the transportation officer had known of the excess weight and had failed to notify the employee, Mr. Murphy's obligation for the excess weight charges would remain. First, there is no statutory authority for waiver of the weight limitation of 5 U.S.C. § 5724(a)(2). Second, under paragraph C7052-2a, Volume 2, JTR, liability for excess weight charges is not contingent upon notification even where the transportation officer has knowledge. Third, in the absence of specific authority, the United States is not liable for erroneous actions of its officers, agents, or employees even though committed in performance of official duties. See B-180180, supra; 44 Comp. Gen. 337, 339 (1964); and B-182648, December 8, 1973.

Mr. Murphy also argues that the 11,000-pound weight limitation is discriminatory because it allows payment by the Government for a maximum weight of 11,000 pounds without regard to the number of dependent children the employee may have. We must point out again that the 11,000-pound limit is prescribed by statute, 5 U.S.C. § 5724(a)(2) (1970), and there is no statutory authority for a waiver of the limitation or for payment by the United States of excess weight charges. B-180180, supra.

We know of no authority under which liability to the United States for the excess costs may be waived. Waivers of certain

B-186753

claims of the United States against an employee arising out of erroneous payment of pay or allowances are authorized when collection would be against equity and good conscience and not in the best interest of the United States under 5 U.S.C. § 5584 (1970). However, such waiver authority does not extend to indebtedness resulting from payment of travel and transportation expenses and allowances and relocation expenses payable under 5 U.S.C. §§ 5724 and 5724a. See B-181631, October 9, 1974.

In view of the above, the settlement letter of April 9, 1976, certifying Mr. Murphy to be indebted to the United States for excess shipment of household goods incident to transfer of duty station is sustained.

R.F.KELLER

Acting

Comptroller General
of the United States